

CIVIL NO. 1:08CV209

Defendants.

ORDER

Plaintiff filed its complaint on May 9, 2008, and summons were duly issued by the Clerk on May 13, 2008, as to the corporate Defendant and Robert L. Hoilman (hereinafter “Defaulting Defendants”), and Defendant Eddie Ledford. The Defaulting Defendants were served on May 15, 2008; answer or other responsive pleading was due June 4, 2008. The Defaulting Defendants did not file answer or otherwise respond to the

complaint herein. Plaintiff filed a motion for entry of default as to the Defaulting Defendants on June 11, 2008; Entry of Default against the Defaulting Defendants was entered by the Clerk on June 12, 2008.¹ In support of the motion for default judgment, Plaintiff filed the Declaration of Mark Olsen, Vice President of Plaintiff Fifth Third Bank, stating the amount due Plaintiff by the Defaulting Defendants as of January 29, 2009, was as follows:

\$	1,292,465.69	Floor Plan Principal Balance Due
	165,262.00	Interest Due (accrues at \$98.73002/day)
	<u>7,496.16</u>	Late Fees and other charges
\$	1,465,233.85	Total indebtedness as of 1-29-09

Declaration of Mark Olson, filed February 2, 2009, at 7. Plaintiff further argues that it is entitled to an award of reasonable attorney fees for

Defaulting Defendants' breach of the guaranty agreement. **Plaintiff's**

Motion for Default Judgment, at 2; see *also*, Exhibit B, Unlimited

Payment Guaranty, *attached to Complaint*, ¶ 7c. Although the Guaranty Agreement does not provide for a specific amount or percentage of

¹ Defendant Eddie Ledford also filed a motion for entry of default as to his crossclaim against Defendant Robert Hoilman on July 30, 2008; Entry of Default on Ledford's crossclaim against Hoilman was entered by the Clerk on July 31, 2008.

recovery for such fees, North Carolina law provides that on a showing of “evidence of indebtedness,” where the agreement fails to provide for payment of a “specific percentage, such provision shall be construed to mean fifteen percent (15%) of the ‘outstanding balance’ owing on said . . . evidence of indebtedness.” **N.C. Gen. Stat. § 6-21.2(2); Plaintiff’s**

Motion for Default Judgment, at 2-3. The Court concludes that attorney fees in the amount of 15 percent of the principle amount due of \$1,292,465.69 is reasonable and, therefore, Plaintiff is entitled to an award of attorney fees in the sum of \$193,869.00.

Based on a review of the record, the Court finds Plaintiff filed this action on May 9, 2008; that service of the summons and complaint was effected on both the corporate Defendant and Defendant Hoilman on May 15, 2008; that neither the corporate Defendant nor Defendant Hoilman filed answer or otherwise responded to the complaint herein; and entry of default as to both the corporate Defendant and Defendant Hoilman was duly entered by the Clerk on June 12, 2008, and July 31, 2008, respectively. No excuse or reason for the dilatory failure to respond appears of record. This Court, therefore, concludes Plaintiff’s motion for entry of default judgment pursuant to the provisions of Fed. R. Civ. P. 55 should be

granted and further expressly determines that there is no just reason for further delay in entry of final judgment against the two Defaulting Defendants pursuant to Fed. R. Civ. P. 54(b).

IT IS, THEREFORE, ORDERED that the Plaintiff's motion for default judgment as to the Defendant Mountain Chevrolet, Pontiac, GMC Truck, Inc., and Defendant Robert L. Hoilman is **ALLOWED**, and a Default Judgment as to these Defendants is filed contemporaneously herewith.

Signed: April 6, 2009

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

